

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Derek Alfama
45 Camile Road, Webster, MA 01570

Date Application filed with the Town Clerk: February 22, 2008

Nature of request: Petitioner seeks a Special Permit to modify Condition #10 of ZBA FY 99-0053, Condition #16 of ZBA FY2000-00028 and ZBA FY2004-00036, for a two-family dwelling.

Location: 346 Lincoln Avenue, (Map 11A, Parcel 19, R-G Zoning District)

Legal notice: Published in the Daily Hampshire Gazette on February 28 and March 5, 2008, and sent to abutters on February 28, 2008

Board members: Hilda Greenbaum, Albert Woodhull and Eric Beal

Submissions: The applicant submitted the following documents with the application which are on file in the office of the Zoning Board of Appeals:

- A Management Plan;
- A description of the Resident Manager's duties;
- A Site Plan, approved by the ZBA on 10/6/05, showing the property, the house location, six parking places, plantings, fencing, light shields, refuse bins, concrete piers and a sign "Resident Parking Only";
- Lease Agreements with current tenants, dated April 7, 2007.

The Planning Department submitted a memorandum dated March 11, 2008 discussing the history of the Special Permits, and copies of Special Permits ZBA FY99-0053, FY2000-00028 and FY2004-00036. Another Special Permit, ZBA FY2006-00010, was granted but never filed with the Registry of Deeds.

Site Visit: March 19, 2007

The Board met Attorney Matt Massengill at the site. The Board observed the following:

- The location of the property in a neighborhood of older homes and near one of the University of Massachusetts parking lots and apartment complex;
- The sign along the driveway, restricting parking to residents;
- Two cars in the parking lot, neither of which had a resident parking sticker, and neither of them on the designated asphalt parking area;
- Three trees, recently planted, in front of the house within the front yard setback;
- Landscape improvements required by previous permits that have been installed;
- Broken sections of the wooden fence in several places;
- Refuse and recycling containers in two places behind the house.

Public Hearing: March 12, 2008

A quorum of three ZBA members could not be reached and the hearing was continued without testimony taken until March 20, 2008

Continued Public Hearing: March 20, 2008

At the public hearing, Attorney Matt Massengill presented the petition, representing Derek Alfama. Future owner David Charron and his attorney Michael Bulman also were present.

Ms. Greenbaum began by reviewing the status of the Special Permits on the property.

- The first two permits for the operation of the two-family residence were given to Kevin Michelson (FY99-0053 and FY2000-00028); each contained a condition that the permit would expire upon change of ownership.
- Special Permit FY2004-00036 also was issued to Kevin Michelson to remove the garage on the property and replace it with a blind fence; the conditions of the earlier permits remained in force;
- Special Permit FY2006-00010 was issued to Derek Alfama, who bought the property. The Board noted that improvements had been made to the site and management of the two-family. No condition that the permit would expire upon change of ownership was included in the permit;
- The FY2006 permit was never filed with the Registry of Deeds and the FY2000 permit had expired with change of ownership. Therefore, in the opinion of the Board Chairperson, there is no current Special Permit for a two-family dwelling and the Board would have to revert to the circumstances prevailing before the FY2006 Special Permit, particularly in terms of the "change of ownership" condition.

Attorney Bulman said that a Special Permit had been issued to Mr. Alfama; it had been signed by the ZBA and filed with the Town Clerk. Mr. Alfama thought the permit was valid and was operating under the terms and conditions of that permit. He only learned differently when Mr. Charron offered to buy the property.

Mr. Woodhull had a question about the process. In the past, there had been many neighbors objecting to the Special Permits. Were the abutters notified this time about the hearing? The Zoning Assistant assured the Board that all abutters had been notified. Because of the change of ownership in 1995 and subsequent improvements to the property, there were now few objections from the neighbors. Only one neighbor called about the hearing and he was in attendance at the hearing.

Attorney Massengill said that he would like the current permit, if granted, to be based on the FY2006 Special Permit. He asked that the Board review the FY2006 conditions and update them as needed.

The Board agreed and reviewed each of the twelve conditions.

Condition #1 had several parts to it which the Board discussed separately:

- The Board agreed that the site plan approved by the Board on October 6, 2005 for the FY2006 was still appropriate as amended;
- The "Resident Parking Only" sign had been installed in the required location and was visible to non-resident drivers;
- The concrete piers in the back yard, with boulders placed in-between, were thought to be sufficient to keep young people from traveling through the yard from Lincoln Avenue to McClure Street. However, Michael Dietrich, 35 McClure Street, said that the tenants move

the concrete pillars so that partygoers can park on the dirt behind the paved parking area. Building Commissioner Bonnie Weeks said that the pillars need to be inserted deeper into the ground to make them immovable.

- Mr. Woodhull noted that the headlight shield has not been completely installed for the fence along the south and north property lines. This part of Condition #1 needs significant improvement, the Board agreed.
- The Board noted that many of the site improvements had been accomplished, but that further repairs should be completed by May of 2008 and maintained thereafter.

Condition #2: The parking permit system had been implemented and seemed to be working. Although the University of Massachusetts was on “spring break” during the site visit and the Board only saw two cars on the property, the Building Commissioner noted that no complaints had been registered in the last 2-3 years.

Ms. Greenbaum said that she would like to add to the condition that cars without a permit would be towed after 24 hours as described in the submitted agreements.

Condition #3: The number of cars on site is limited to six on a regular basis. Mr. Dietrich stated that eight (8) cars were parked there regularly. Ms. Greenbaum said that curbing should be placed at the eastern end of the parking area so that tenants or visitors would not park on the non-paved area closer to the house. (At the time of the site visit, there were two cars parked in the muddy non-paved area while the paved parking area was empty.) In addition the concrete wheel stops shown on the approved site plan were not in evidence; they need to be permanently installed and maintained.

Condition #4: The concrete posts required by this condition had been put in place, but it was noted that the posts had been moved for larger social events. The Board concluded that the posts needed to be permanently installed with concrete footings and that more boulders were needed to fill in the holes between the posts.

Condition #5: The status of the refuse and recycling containers did not quite match this condition. An animal resistant enclosure had not been built; there were more than two containers, and no recycling containers. Ms. Greenbaum said that the current containers on the property were animal resistant, so she did not see the need for an enclosure now.

Condition #6: The evergreen barrier along the west side of the property was in evidence at the site visit. The Board noted that it needed to be maintained in the future.

Condition #7: The Board noted at the site visit that three maple trees had been planted in the front of the property along Lincoln Avenue. Concrete curbing also had been installed along the front and along the driveway to prevent cars from parking on the front lawn. These improvements should be maintained by the property owner in the future.

Condition #8: The Board noted that the existing wooden fence was not in good repair, and that headlight shields need to be installed. The fence needs to be repaired and the shields installed.

Conditions #9 & 10: The Board reviewed the submitted Management Plan. It appeared to be basically satisfactory except for the resident manager. Ms. Greenbaum asked if a resident manager existed, and Attorney Massengill said that there was one. Ms. Greenbaum said that the person's name and phone number needed to be given to Inspections Services, the Health Department and the

ZBA. Attorney Massengill said that he would submit the name and phone number of the person.

Mr. Woodhull asked how many tenants lived in the residence. Mr. Massengill said that there were eight tenants.

Mr. Woodhull asked if the abutters knew who the manager was, and Mr. Dietrich said that they did not. Occasionally there have been noise complaints, Mr. Dietrich said, but that there was one female tenant who seemed more responsible than the others. She is not the resident manager, he said.

The Board asked the prospective new owner, David Charron, how he would be managing the property. Mr. Charron said that he lives in Ludlow, has other rental property and comes every week to inspect the property, mow the lawn, and do repairs.

Both Attorney Massengill representing Mr. Alfama and Mr. Charron said that they interview each prospective tenant so that the tenants know what is expected of them.

Ms. Greenbaum asked who was responsible for the refuse/recycling pickup. Mr. Massengill said that the landlord was, not the tenants.

Condition #11: The fencing and plantings had been covered in earlier conditions.

Mr. Woodhull asked Mr. Dietrich if other abutters were bothered by the gaps in the fence. Mr. Dietrich said that several of the neighbors are new, having moved in since the last permit and did not know that they should come to the hearing. There is not the neighborhood organization that there was previously, although he can contact the immediate neighbors in the future.

Mr. Bulman said that the gaps in the fence can be covered in order to shield the neighbors from the headlights. The neighbor to the south is particularly close to the driveway.

Condition #12: The condition that the permit expires upon change of ownership has a history, Ms. Greenbaum noted. The property had always been a single family residence, and the conversion to a two-family residence had been problematic. Ms. Greenbaum asked the other members of the Board whether the expiration condition should be part of the current permit if granted, or should the condition state that the Management Plan be reviewed upon change of ownership.

Mr. Beal asked if the permit runs with the property, not the owner. Both Attorneys Massengill and Bulman replied that Special Permits are attached to the deeds and are permanent unless stated otherwise. In other words, a Special Permit can expire upon change of ownership if stated as a condition of the permit.

Mr. Massengill stated that there had been a history of neglect of the property when it was originally a two-family rental, but that the property was much improved under Mr. Alfamo's ownership.

The Board discussed Condition #12 at length. They agreed that the neighbors should know who the new owner/manager would be if the property was sold. The neighbors should have a right to review the Management Plan and to report to the Board if conditions of the permit had not been followed.

The Board decided that a compromise between (1) requiring a new hearing upon change of ownership or (2) simply a public meeting to review the Management Plan was in order in this case. The Board agreed that Condition #12 of the FY2006 would be maintained, but that the new property

owner would be responsible for notifying the immediate neighbors on Lincoln Avenue, North Hadley Road and McClure Street about the public meeting to discuss the new Management Plan. Lincoln Apartments across the street from the property and the University to the north of the property would not have to be notified.

Ms. Greenbaum asked if there were any more issues before the hearing would be closed. She commented about the exterior lighting at the edge of the house. She noted that it should be motion activated and downcast. Since it's above the fence and shines directly west, the neighbors are affected. The Board and the petitioner agreed that the light should be downcast.

Mr. Dietrich said that he would like the name of the resident manager to be sent to him. The petitioner agreed to do so.

Mr. Dietrich also commented on the large pine at the corner of Lincoln and North Hadley Road that obstructs the line of vision for drivers. The Board determined that the tree is in the public right of way, and that the Tree section of the Department of Public Works should be contacted.

With no other questions/comments forthcoming, Mr. Woodhull made a motion to close the public hearing. Mr. Beal seconded the motion, and the Board voted unanimously to close the public hearing.

Public Meeting – Discussion

At the public meeting, the Board discussed the application and reviewed the conditions once again. The Board noted that conditions at the site had improved under the Mr. Alfama's ownership. They discussed the conditions of the previous permit and stated that the conditions that had not yet been met should be completed by the next planting season (spring of 2008).

Mr. Woodhull made a motion to accept the conditions as modified. Mr. Beal seconded the motion, and the vote was unanimous to accept the conditions as modified by the Board.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38, Specific Findings Required of all Special Permits, the Board found that:

10.380 and 10.381 – The proposal is suitably located in a neighborhood of single and multi-family dwellings, and thus is compatible with existing uses in the district. The site has been improved and it will be further improved and maintained in good condition via the conditions of this permit.

10.382 and 10.383 – The proposal would not constitute a nuisance, a substantial inconvenience or a hazard, because there will be a Resident Manager who will maintain close control over the operation of the property; in addition, the Management Plan and the Lease Agreement place strict controls on behavior of tenants; the fencing along the property lines will block headlights from shining onto neighboring properties; and the number of cars parked on the site will be limited, reducing the number of vehicle trips to and from the site.

10.384, 10.385 and 10.393 – Adequate and appropriate facilities would be provided because the parking area will be orderly and manageable with only 6 cars parked regularly on site, appropriate screening, headlight shields on the fence and a Resident Manager.

10.386 – The proposal ensures that it is in conformance with the parking regulations of the town because it provides more than two parking spaces per dwelling unit, but limits the number of cars to six, overall, so as not to cause unsafe conditions on the site or disruption for neighbors. In addition, a small sign saying "Resident Parking Only" has been designed and installed to be in keeping with the

residential character of the neighborhood and in compliance with Section 8.100 of the Zoning Bylaw which allows signs of up to eight (8) square feet in area in a residential zone.

10.389 – The proposal provides adequate methods of storage for refuse and recyclables because it will provide storage for these items in animal resistant containers.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst and specifically the neighbors along Lincoln Avenue, McClure Street and North Hadley Road.

Public Meeting – Zoning Board Decision

Mr. Woodhull made a motion to APPROVE the application with conditions. Mr. Beal seconded the motion.

For all the reasons stated above the Board VOTED unanimously to GRANT a Special Permit to modify Condition #10 of ZBA FY 99-0053 and Condition #16 of ZBA FY 2000-00028 and ZBA FY2004-00036, to operate a two-family dwelling, as requested in the application filed by Derek Alfama, at 346 Lincoln Avenue, (Map 11A, Parcel 19, R-G Zoning District), with conditions

HILDA GREENBAUM

ALBERT WOODHULL

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by Carolyn Holstein, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to modify Condition #10 of ZBA FY 99-0053 and Condition #16 of ZBA FY 2000-00028 and ZBA FY2004-00036, to operate a two-family dwelling, as requested in the application filed by Derek Alfama, at 346 Lincoln Avenue, (Map 11A, Parcel 19, R-G Zoning District), subject to the following conditions:

1. Parking and landscaping shall be as shown on the site/landscape plan approved at the public meeting of March 20, 2008, with the "Resident Parking Only" sign located about 15 feet back from the curb cut at Lincoln Avenue, concrete posts permanently installed to the west of the parking lot, concrete wheel stops at the northern edge of the parking lot, six (6) and only six, and a headlight shield installed on the fence along the south and the north property lines. Site improvements shall be completed by spring of 2008 and maintained thereafter.
2. A parking permit system, including parking stickers and a sign indicating "Resident Parking Only" shall be implemented and enforced as described in the Management Plan approved by the Board at the public meeting on March 20, 2008.
3. No more than a total of 6 cars may be parked on site on a regular basis
4. Concrete posts shall be installed at the western end of the parking area in order to prevent vehicles from driving through or parking in the rear yard area, and shall be set deeply enough with poured concrete footings so they cannot be readily removed.
5. Refuse and recycling containers shall be located as shown on the site/landscape plan approved at the public meeting of March 20, 2008.
6. An evergreen barrier shall be continuously maintained along the west boundary as shown on the site/landscape plan approved on March 20, 2008.
7. No fewer than three staked sugar or red maple trees shall be planted and maintained, or maintained if currently existing, to restore the Lincoln Avenue streetscape, as shown on the site/landscape plan approved on March 20, 2008. Parking by tenants or others in any area on any area of the front yard under the trees shall be prohibited and enforced by the Resident Manager.
8. The concrete curbing along the driveway and Lincoln Avenue shall be maintained. In addition, concrete curbing shall be placed and maintained along the eastern edge of the parking area as shown on the site plan approved by the Board on March 20, 2008, in order to discourage parking in the unpaved area behind the house. Parking by tenants or others in any area off of the driveway and paved parking area shall be prohibited and enforced by the Resident Manager.
9. The existing wooden fence shall be repaired and headlight shields installed by the spring of 2008, and maintained thereafter in good condition.
10. Management of the property, including the appointment of a Resident Manager who is granted authority to act as the landlord's agent in specific matters regarding management of the property including, but not necessarily limited to, the conditions of this permit, shall be as described in the Management Plan and the sample leases submitted with the application and approved on March 20, 2008.
11. The landlord shall maintain a telephone dedicated to the management duties of the Resident

- Manager, located in the Resident Manager's residence. The name and telephone number of each Resident Manager shall be transmitted within 14 days of their appointment to the Zoning Board of Appeals, the Health Department and the Building Commissioner, and that information shall be kept current and up to date.
12. Exterior lighting shall be downcast.
 13. Upon change of ownership, the new owner shall submit a Management Plan to the Board for review and approval at a public meeting. Immediate abutters, excluding Lincoln Apartments and the University of Massachusetts, shall be notified of the change of ownership by the new owner.
 14. The conditions of this permit shall replace all conditions of previous permits.

HILDA GREENBAUM, Acting Chair
Amherst Zoning Board of Appeals

DATE